

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]  
[REDACTED] Dr.

Reg. No: 2010-26288

Issue No: 2014

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 14, 2010

Gladwin County DHS

**ADMINISTRATIVE LAW JUDGE:** Landis Y. Lain

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on July 14, 2010. Claimant personally appeared and testified.

**ISSUE**

Did the Department of Human Services (the department) properly determine that claimant had excess income for purposes of Medical Assistance and a deductible spend-down?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant had an active Medical Assistance case.
- (2) Claimant was due for a semi-annual review in December 1, 2009.
- (3) A 1046 was received in November 30, 2009.
- (4) Claimant noted that her pay was unusually high for the two pays provided but per the work number and the pay stubs provided in December, income was consistent with past pays so that the department used the four prior payments that claimant received in its assessment of claimant's eligibility for continued Medicaid.
- (5) Based upon the new budget, claimant is QMB Medical Assistance case was pending to close and it was determined that claimant should receive

Medicaid deductible spend-down as of February 1, 2010, due to excess income.

- (6) On December 22, 2009, the department caseworker sent claimant notice that her Medical Assistance benefits would be cancelled and a deductible spend-down case opened effective February 1, 2010.
- (7) On December 28, 2009, claimant filed a request for a hearing to contest the department's negative action.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Michigan provides Medical Assistance Michigan provides MA eligible clients under two general classifications: Group 1 and Group 2 MA. Claimant qualified under the Group 2 classification because she received RSDI income which consists of clients whose eligibility results from the state designating certain types of individuals as medically needy. BEM, Item 105. In order to qualify for Group 2 MA, a medically needy client must have income that is equal to or less than the basic protected monthly income level. Department policy sets forth a method for determining the basis maintenance level by considering:

1. The protected income level,
2. The amount diverted to dependents,
3. Health insurance and premiums, and
4. Remedial services if determining the eligibility for claimants in adult care homes.

If the claimant's income exceeds the protected income level, the excess income must be used to pay medical expenses before Group 2 MA coverage can begin. This process is known as a spend-down. The policy requires the department to count and budget all income received that is not specifically excluded. There are three main types of income: countable earned, countable unearned, and excluded. Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Unearned income is any income that is not earned. The amount of income counted may be more than the amount a person actually receives, because it is the amount before deductions are taken, including the

deductions for taxes and garnishments. The amount before any deductions are taken is called the gross amount. PEM, Item 500, p. 1.

In the instant case, the department calculated claimant's income based upon receipt of \$829 per month in RSDI income from Social Security Administration.

After giving claimant the appropriate \$ [redacted] deductions, the claimant was receiving \$ [redacted] per month in net monthly income. Claimant also had earned income and based upon the average check stub, was earning \$ [redacted] in countable earned income. The department gave claimant a \$ [redacted] plus ½ disregard with equals \$ [redacted] \$ [redacted] minus \$ [redacted] equals % [redacted]. The department was required to add the \$ [redacted] net unearned income with the net earned income of \$ [redacted] which equals a total net monthly income of \$ [redacted]. Federal regulations at 42 CFR 435.831 provide standards for the determination of the MA monthly protected income levels. The department, in this case, is in compliance with the Program Reference Manual, Tables, Charts, and Schedules, Table 240-1. Table 240-1 indicates that the claimant's monthly protected income level for claimant's fiscal group of one person is \$ [redacted] per month which leaves her with a net excess income in the amount of \$ [redacted]. The department's determination that claimant has excess income for purposes of Medical Assistance eligibility is correct. The department also determined that claimant had excess income for Medical Assistance AdCare which has an income limit of \$ [redacted] and Medical Assistance QMB which has an income limit of \$ [redacted] also.

Deductible spend-down is a process which allows the customer with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. BEM, Item 545, p. 1. Meeting the spend-down means reporting and verifying allowable medical expenses that equal or exceed the spend-down amount for the calendar month tested. BEM, Item 545, p. 9. The group must report expenses by the last day of the third month following the month it wants MA coverage for. BEM, Item 130, explains verification and timeliness standards. BEM, Item 545, p. 9.

The department's determination that claimant had a spend-down in the amount of \$ [redacted] per month is correct based upon the information contained in the file.

Claimant's allegation that the spend-down is too expensive and unfair because she would not have enough money to pay anything beyond her rent and also because her income had not increased over the year and she was receiving QMB Medical Assistance in full.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes,

overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

Therefore, the Administrative Law Judge finds that the department has established by the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant had excess income for purposes of Medical Assistance benefit eligibility and when it determined that claimant had a monthly deductible spend-down in the amount of \$594 per month.

Claimant in this case, makes a compelling equitable argument to be excused from department policy. The Administrative Law Judge has no equity powers in this case and cannot act outside of department policy.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it cancelled claimant's Medical Assistance benefits and opened a deductible spend-down case for claimant in the amount of \$594 per month based upon claimant's possession of excess income.

Accordingly, the department's decision is AFFIRMED.

Landis

/s/ \_\_\_\_\_  
Y. Lain  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: July 23, 2010

Date Mailed: July 26, 2010

**NOTICE:** Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/alc

cc:

